

Selph is said to anticipate Applicant's claim 1: "a system for monitoring and controlling utility-based consumption wherein the computer system computes a forecast of consumption for one or more predetermined periods of time and wherein the computer system signals for the control of consumption through the controlling of one or more devices that consume utility-based products based on the forecast." The references given in Selph include Col. 3, line 12 to Col. 4, line 18 and Col. 12, line 17 to Col. 13, line 4.

Examiner relies on the statement from Selph that his invention uses a "control means for causing the processor to monitor the digital information as it is received or at periodic intervals and to provide an alarm event indication in response to a predetermined fault condition. For example, the processor can be programmed to respond to an interruption in utility service or degradation in utility service by storing a record of the event and the time at which the event occurred in memory. The memory may be accessed remotely through the communication means to get details of the alarm event even after it has occurred." (Col 3, line 15 – line 25).

Examiner seeks to relate or equate the use of the term "predetermined fault condition" by Selph to the use of the Applicant's phrase "computes a forecast of consumption for one or more predetermined periods of time".

Applicant wishes to cite The Merriam-Webster Dictionary definition of the noun "forecast" as:

- 1 *archaic* : foresight of consequences and provision against them : **FORETHOUGHT**
- 2 : a prophecy, estimate, or prediction of a future happening or condition

The referenced dictionary defines the verb "predetermined" as:

- 1 a : **FOREORDAIN, PREDESTINE** b : to determine beforehand
- 2 : to impose a direction or tendency on beforehand

Selph monitors data in real-time ("...as it is received") and historical points ("...at periodic intervals"). Selph then reacts, post-fact, to a condition named beforehand which is said to have a tendency to occur – in this case a "predetermined fault condition". Selph does not teach or suggest the prophecy, estimate or prediction of when such an occurrence will take place nor does Selph teach or suggest the foresight of the consequences and making provision against them occurring. Applicant therefore believes that Selph's invention is akin to looking at events in the rear-view mirror of an automobile. Selph sees events as soon or after they occur but, does not look forward with a forecast to try to predict and avoid the occurrence of such events.

In the case of the present invention, a forecast predicts utility use or cost for a specific time period and allows the user to control consumption in such a way that a provision is made against utility consumption exceeding a target amount. This is presented by the Applicant using the automobile analogy as follows: "Data can be used to forecast whether the consumer will be under his specified usage or cost level of consumption. Such forecasts are commonly used by trip computers in automobiles to tell the consumer whether they should adjust their speed to reduce fuel consumption..." (Page 4, lines 25-

29). This is also presented by the Applicant, without analogy, as follows: "In the present invention, if the forecast indicates that the present usage rate will cause that consumer to exceed the baseline unit or cost level, a signal is sent from the computer to enable the manual or automatic control of usage of devices to assure that they end the time segment below the specified requirement, especially during energy or water crisis situations." (Page 4, line 30 – Page 5, line 3). Thus, as opposed to Selph, the present invention predicts future use or cost and makes provision to keep usage or cost from exceeding a baseline level.

Selph also uses a term "predetermined utility usage". In this case, the term relates to an alert concerning an apartment complex as follows: "Thus, the utility metering system can also alert the manager or tenant of an emergency such as fire or breaking and entering. The data Collection computer can also include an automatic telephone dialer and communication device for placing a telephone call in response to the emergency condition or in response to a predetermined utility usage. In addition, the data Collection computer can also be provided with both audible and silent alarms for providing an alerting signal in response to emergencies or in response to predetermined utility usage. (Col. 4 line 8 - Col 4 line 18) Selph does not teach or anticipate trying to forecast when these events may take place nor does he teach or anticipate trying to alter utility usage to keep these events from taking place. Selph is merely reacting to the event after it takes place.

The present invention proactively allows a utility or landlord to avoid grid overload and other problems, thus preventing an interruption or degradation of service as follows: "By having remote access to control power-consuming devices, the landlord or utility company 806 or, both acting together under contract, might regulate the rate of power consumption while not physically going there. For example; the landlord may control the temperature of the common area of the building from his home computer 814 or even programming the lights to turn off at certain times during the day when sunlight is adequate. The utility company 806 may raise the temperature of thermostats for HVAC systems in summer periods when the power-grid is approaching maximum capacity." (Page 18, lines 8-15).

The only mention by Selph of an attempt to change energy use in response to an alarm or alert occurs in Col 1 line 64 to Col 2 line 1. Here, Selph describes a reaction to an event where the "level of consumption increases into a higher billing rate level. The company could then shed some load it is using in order to return to a lower billing rate level". Again, a response occurs after an event has taken place, thus, a higher billing level has already been traversed before an alarm alerts the user. Any action taken by Selph occurs after-the-fact in order to return back to the lower billing rate level.

In contrast to Selph, the Applicant's invention teaches a specific method of avoiding a higher billing rate level as follows: "In addition to avoid being charged a premium rate for consumption, the forecast-driven computer can allow the end user to manually or automatically utilize all the non-premium power allocated to him." (Page 16, lines 6-8) Thus, before such a point of higher cost is reached, the present invention makes provision

to keep consumption under the level where a higher billing rate is reached.

Thus, it can be seen that the present invention proactively teaches the use of a forecast for the control of energy use and cost so that higher billing levels, higher consumption levels and utility interruption or degradation in service can be avoided. Selph does not teach or anticipate such forecasting and makes no provision to avoid such conditions. Thus, for at least this reason, independent claims 1, 28 and 50 should be allowed and claims 2-27, 29-49 and 50-59 should be allowed on the basis of their dependency on claims 1, 28 and 50 respectively.

### CONCLUSION

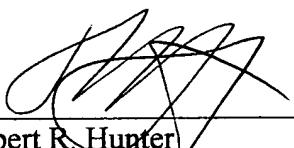
Thus, in light of the above, having responded to each and every ground of rejection, Applicants respectfully request reconsideration and allowance of the pending claims in the above-mentioned application and respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

Robert R. Hunter

Applicant

Dated: June 6, 2005

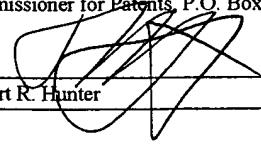


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#### **CERTIFICATE OF MAILING (37 CFR 1.8(a))**

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited on June 6, 2005, with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450.

Date: June 6, 2005



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